

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**RONDA R STECK**  
Claimant

**NORTHWEST IOWA HOSPITAL CORP**  
Employer

**APPEAL NO. 15O-UI-04686-B2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 11/16/14  
Claimant: Appellant (1)**

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Iowa Code § 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated December 9, 2014, reference 01, which held claimant ineligible for unemployment insurance benefits. Hearing was originally held in this matter on March 9, 2015. Claimant appealed the decision entered by this judge to the Employment Appeals Board. The Board remanded this matter back to this administrative law judge to further develop the record regarding claimant's FMLA and its effect on claimant's ability to do her work. After due notice, a hearing was scheduled for and held on May 28, 2015. Claimant did not participate. Employer participated by Barb Caskey and Stacy Petersen. Claimant's Exhibits A-K were previously admitted into evidence.

**ISSUE:**

The issue in this matter is whether claimant was discharged for misconduct?

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on November 20, 2014. Employer discharged claimant on November 20, 2014 because of claimant's unprofessional actions and lack of properly completing documentation after being warned.

Employer claims to have suspended claimant for improper documentation, bar coding, and incomplete patient assignments. The documentation surrounding the suspension was never signed by claimant nor by a supervisor or manager for employer. Claimant states that she was never suspended, and was off on FMLA during the time she was supposed to be suspended. Employer explained that claimant's FMLA leave was intermittent, not constant. The court notes that claimant's exhibit D states that the leave will be "intermitant" (sic). That same Leave of Absence document states that an FMLA leave requires that claimant return the signed Medical Certification of Health Care Provider by August 25, 2014.

Claimant forwarded Certification of Health Care Provider information to employer by fax on or around December 16, 2014, after her termination. The information form was signed by claimant on or around August 11, 2014 and signed by a doctor on the same date. Said document

appears to have dates changed on the duration of the condition leading to the FMLA request. Whereas the document is signed on August 11, 2014, the duration of the injury extended to August 25, 2014. The writing on the form extending the duration appears to have been written over the date of August 11, 2014 written in two places. (Claimant's Exhibit E).

Claimant came in for a staff meeting on July 31, 2014 and it was at that time that she was informed of the infractions, and informed of her suspension for her coding infractions. Claimant never signed a Personnel Action Form.

As claimant did not participate in the hearing held May 28, 2015, the court was not able to explore the FMLA issue with claimant. Employer provided little FMLA information stating that those matters were handled exclusively by the Employee Health/Wellness department and not by human resources.

### **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code § 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r. 871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982), Iowa Code § 96.5-2-a.

In order to establish misconduct as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. Rule 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa Ct. App. 1986). The conduct must show a willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or the employee's duties and obligations to the employer. Rule 871 IAC 24.32(1)a; *Huntoon supra*; *Henry supra*. In contrast, mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not deemed misconduct within the meaning of the statute. Rule 871 IAC 24.32(1)a; *Huntoon supra*; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

The employer bears the burden of proving that a claimant is disqualified from receiving benefits because of substantial misconduct within the meaning of Iowa Code section 96.5(2). *Myers*, 462 N.W.2d at 737. Because our unemployment compensation law is designed to protect workers from financial hardships when they become unemployed through no fault of their own, we construe the provisions "liberally to carry out its humane and beneficial purpose." *Bridgestone/Firestone, Inc. v. Emp't Appeal Bd.*, 570 N.W.2d 85, 96 (Iowa 1997). "[C]ode provisions which operate to work a forfeiture of benefits are strongly construed in favor of the claimant." *Diggs v. Emp't Appeal Bd.*, 478 N.W.2d 432, 434 (Iowa Ct. App. 1991).

Claimant's testimony contradicts the documents that she has submitted. The contradictions occur not only with the days worked during the time of intermittent leave, (see Claimant's Exhibit G), but also with claimant's statements that she never received any of the warnings, which was contradicted by the more credible testimony of employer's witnesses.

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation. In this matter, the evidence established that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning coding errors and omissions of documentation. Claimant was warned and educated concerning these policies.

The last incident, which brought about the discharge, constitutes misconduct because claimant's documentation omissions and coding errors can have extraordinary health consequences. The administrative law judge holds that claimant was discharged for an act of misconduct and, as such, is disqualified for the receipt of unemployment insurance benefits.

**DECISION:**

The decision of the representative dated December 9, 2014, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

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Blair A. Bennett  
Administrative Law Judge

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Decision Dated and Mailed

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